THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C.BHANU
WRIT PETITION No.18076 OF 2007
DATED: 20-11-2007

1.The Executive Engineer, I & CAD, I.B. Division, Karimnagar, Karimnagar District.

2.The Government of A.P. represented by its Secretary, Finance and Planning Department, Secretariat, Hyderabad.

... Petitioners

versus

1.Md.Yousuf, Driver, 8th Andhra Girls Battalion, NCC Warangal, Warangal District.

2.The Assistant Director, NCC Group Head Quarters, Warangal, Warangal District.

... Respondents

THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No.18076 OF 2007

ORAL ORDER: **(per the HON'BLE SRI JUSTICE D.S.R.VARMA)**

Heard the learned Government Pleader for Services-II, appearing for the petitioners, as well as the learned counsel appearing for the respondent No.1 only, since none appears on behalf of the respondent No.2, despite service of notice.

2. Petitioners are the respondent Nos.1 and 3, the respondent No.1 is the applicant and the respondent No.2 is the respondent No.2, in the O.A., before the Andhra Pradesh

Administrative Tribunal at Hyderabad (for brevity “the Tribunal”).

3. Aggrieved by the order, dated 24.08.2006, passed by the Tribunal, ordering the petition O.A.No.2522 of 2003, directing the petitioner No.1 to pay the salary to the respondent No.1 from 27.07.2001 to 15.03.2002, the present writ petition has been filed.

4. The factual backdrop, as could be seen from the impugned order of the Tribunal, is that the respondent No.1, while working as driver, in the Irrigation Department, was declared as surplus, along with others, and consequently, he was directed to serve in the pool, maintained by the Government; that as per the proceedings, dated 31.01.2001, issued by the Government, posting the respondent No.1 to work as Driver in Andhra Girls Battalion NCC, Warangal, the respondent No.1 got himself relieved and gave joining report at Warangal; that he was not admitted to duty on the ground that his service book was not transmitted; that, therefore, he reported back to the Deputy Executive Engineer, I&CAD I.B. Sub Division, Karimnagar, who addressed a letter, dated 15.03.2001, to the petitioner No.1, requesting to send necessary particulars as required by the NCC authorities; that, in the meanwhile, because of the present contingencies, the respondent No.1 was allotted to 32nd Andhra NCC Battalion, Adilabad District; that, aggrieved thereby, the respondent No.1 filed an application O.A.1954 of 2001, which was eventually disposed of, by the Tribunal, with a direction to the respondent No.1 to make a representation to the petitioners, within one week from the date of the said order, with a further direction to the petitioners to consider the case of the respondent No.1 and to pass appropriate final orders, within one month thereafter and that pending passing of final orders, the order impugned therein was suspended.

5. It appears, since no order had been passed on the representation, dated 04.04.2001, by the Government, the petitioner No.3, in pursuance of the said order of the Tribunal, the respondent No.1 had again filed an application O.A.No.5376 of

2001, which was disposed of, by order, dated 27.03.2001, with a direction to the petitioners not to act upon the order, dated 26.07.2001, passed by the Deputy Executive Engineer, I&CAD, I.B. Sub-Division, Karimnagar, and that appropriate action be taken, depending upon the order to be passed on the representation, dated 04.04.2001, of the respondent No.1.

6. It also appears, since the said order of the Tribunal was also not complied with, Contempt Application No.881 of 2001 was filed, when the summons were served to the petitioners, the respondent No.1 was allowed to assume duty at Andhra Girls Battalion NCC, Warangal, as Driver, on 15.03.2002, and since then he is working as such.

7. Be that as it may, the present O.A., came to be filed, seeking salary for the period from 27.07.2001, on which date the respondent No.1 was allegedly relieved from duty so as to join at Warangal, till he actually joined duty on 15.03.2002, after initiation of the contempt proceedings.

8. Learned counsel appearing for the respondent No.1 contends that the transfer that was effected initially to Warangal, of course, was not serious, however, petitioners were at fault in transferring the respondent No.1 to Nirmal, through proceedings, dated 05.03.2001.

9. In this context, it is to be remembered that the respondent No.1 and others, who were originally employed in Irrigation Department, were found to be surplus. Instead of terminating them from services, Government had taken a decision to absorb them in other departments, wherever the vacancies were and accordingly issued Memo No.43043/1650/SMPC/2000, dated 31.01.2001.

10. Admittedly the respondent No.1 was initially transferred to Warangal, where he could not be admitted, as his service particulars were not received, and the petitioners, having found a vacancy, have allotted the respondent No.1 to Nirmal, Adilabad District, and issued order of posting as such.

11. We are unable to comprehend what was the right for the respondent No.1 to continue in service when there are no vacancies, particularly he was found to be surplus staff and was totally at the doors of the Government and, in all probability, the Government could and should have terminated his services, but the same was not resorted to and however, he was tried to be accommodated in the existing vacancy and, in that process, these developments have taken place and eventually the vacancy had been found only in order to absorb the respondent No.1 at Nirmal, Adilabad District. Instead of joining there and serving the department, the respondent No.1 had filed the application O.A. No.1954 of 2001, and got it disposed of, wherein there was a direction to the respondent No.1 to file a representation, which shall be considered by the petitioners and pending disposal of the representation, the order of transfer to Nirmal was suspended.

12. We are of the considered view that the respondent No.1 has no vested right to claim any salary, on the basis of transfer order, which was suspended by the tribunal. Though there is no material on behalf of the petitioners, we cannot appreciate the conduct of the respondent No.1 in coming back from Warangal to Karimnagar on the ground that he could not be admitted into service. In the latter part, when the respondent No.1 was transferred to Nirmal, after identifying the vacancy, instead of joining there, filing of O.A., also cannot be appreciated.

13. There is absolutely no duty cast upon the Government to absorb all these employees, including the respondent No.1, who were found surplus, nor there is any vested right to them. Further, the present O.A., filed by the respondent No.1, was disposed of, by the Tribunal, directing the petitioners to pay the salary to him from 27.07.2001 to 15.03.2002. The respondent No.1 cannot take advantage of the situation and claim salary from the date of his relieving at Karimnagar and joining at Warangal, that too, under the threat of contempt proceedings.

14. However, since the respondent No.1 was without any

occupation, for no fault of him, and, of course, for no fault of the petitioners, suffice it to modify the impugned order, passed by the Tribunal, directing the petitioners to consider the case of the respondent No.1 only to the limited extent of eligibility of salary i.e., from the date of passing of the order transferring him from Karimnagar to Nirmal.

15. Accordingly, the writ petition is disposed of. However, there shall be no order as to costs.

JUSTICE D.S.R.VARMA

JUSTICE K.C.BHANU

20TH NOVEMBER, 2007
HSD